

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al. *ex rel.*
ARASH MOHAJER and CHRISTOPHER C.
PETERSON,

Plaintiffs,

v.

OMNICARE, INC.,

Defendant.

17 Civ. 4176 (CM)

**NOTICE OF THE GOVERNMENT’S OPPOSITION TO DISMISSAL OF CERTAIN
CLAIMS OF RELATOR ON THE BASIS OF THE PUBLIC DISCLOSURE BAR**

Pursuant to the False Claims Act (“FCA”), 31 U.S.C. § 3730(e)(4)(A), the United States exercises its right to object to dismissal of the Amended Complaint of relators Arash Mohajer and Christopher C Peterson on the basis of the public disclosure bar for those claims accruing on or after March 23, 2010.¹

The False Claims Act states in pertinent part:

The court shall dismiss an action or claim under this section, *unless opposed by the Government*, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—(1) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

31 U.S.C. § 3730(e)(4)(A) (2010) (emphasis added). Pursuant to the statute, if the United States objects to a motion to dismiss on the ground of public disclosure, the motion cannot be granted.

¹ The public disclosure bar of the FCA was amended on March 23, 2010. In *Graham County Soil and Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 283 n.1 (2010), the Supreme Court held that this amendment was not retroactive. Thus, it applies only to claims submitted on or after the effective date of the amendments.

See, e.g., U.S. ex rel May v. Purdue Pharma L.P., 737 F.3d 908, 917 (4th Cir. 2013); *U.S. ex rel. Griffith v. Conn.*, 117 F. Supp. 961, 967 n.1 (E.D. Ky. 2015).

In submitting this notice, the United States objects to the dismissal of the action pursuant to the public disclosure bar of the relators' claims that accrued on or after March 23, 2010, and therefor, the defendants' motions to dismiss on this ground should be denied.

Dated: July 17, 2020
New York, New York

Respectfully submitted,

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